Robbins, Joanne

From: Malathy Subramanian [Malathy.Subramanian@bbklaw.com]
Sent: Monday, August 03, 2009 4:02 PM
To: Robbins, Joanne
Subject: RE: Regional Agency Agreement

Joanne,

The First Amendment to Third Amended Joint Exercise of Powers Agreement ("Agreement") overall looks okay. I have the following comments:

Article 4, Section B: There appears to be a typo in the first sentence, which should read as follows:
"Except as otherwise provided below, this Agreement may be amended by a two-thirds (2/3) vote of all members of the board, and any such amendments will be effective~~ly~~ upon the date of such action."

The second sentence should also be revised as follows:
"The following provisions may be amended only by two-thirds (2/3) vote of all members of the Board and approval by the Contra Costa County Board of Supervisors and shall become effective upon approval of the Board and the County: The last sentence of Article 1, Section E; the entirety of Article 1, Section F, the entirety of Article 2, Section B.14; the last sentence of Article 4, Section B: and the entirety of Article 4, Section~~s B and~~ C."

Article 4, Section C: There appears to be a typo in the first sentence and "separate contacts" should read "separate contracts".

Regional Agency Costs will be proportional to each Participating Members' allocated share of the compensation paid to the CCSWA franchised solid waste collection companies for services provided pursuant to the franchise. The original language provided that it would be apportioned based upon the proportion of tonnage of solid waste collected within each jurisdiction in relation to the total tonnage collected within the area served under CCCSWA collection franchises (not including the unincorporated area) in the most recent 12 month period for which data is available. I don't know if one version is more equitable to Lafayette than the other version or if this language was already approved by the Board after taking these issues into consideration.

Mala

From: Robbins, Joanne [mailto:JRobbins@ci.lafayette.ca.us]
Sent: Monday, August 03, 2009 12:19 PM
To: Malathy Subramanian
Subject: FW: Regional Agency Agreement

Mala: Attached is the information from CCCSWA

Joanne Robbins, CMC
City Clerk
City of Lafayette
3675 Mt. Diablo Blvd. #210
Lafayette, CA 94549
925-299-3210

From: Janna McKay [mailto:janna@wastediversion.org]

FIRST AMENDMENT TO THIRD AMENDED JOINT EXERCISE OF POWERS AGREEMENT

Effective _____, 2009, the cities of Danville, Lafayette, Moraga, Orinda and Walnut Creek, and the County of Contra Costa, acting by and through their respective members of the Central Contra Costa Solid Waste Authority ("CCCSWA") Board of Directors, mutually agree to amend the Third Amended Joint Exercise of Powers Agreement ("Agreement") as follows:

1. The following paragraph is inserted at the end of **Article 1, Section E** of the Agreement:

> "Notwithstanding the foregoing, any and all expenses of the CCCSWA involved in administering regional agency activities shall be apportioned among participating members of the regional agency, as further described in Article 4, Section C.3."

2. The following Section is inserted at the end of **Article 1** of the Agreement:

> "F. Establishment of a Regional Agency: Public Resources Code ("PRC") sections 40970 through 40975 allow cities and counties to form "regional agencies" to implement PRC Division 30, Part 2 Integrated Waste Management Plans, to reduce the cost of reporting and tracking of disposal and diversion programs by individual cities and counties and to increase the diversion of solid waste from disposal facilities.
>
> CCCSWA has sought regional agency designation by the California Integrated Waste Management Board ("CIWMB") for the primary purpose of jointly reporting disposal and diversion for its participating members pursuant to PRC sections 40970 through 40975. The CIWMB or other agency, officer, entity or person designated by the State to perform the functions of the CIWMB pursuant to the Integrated Waste Management Act of 1989 ("AB 939") as codified within Division 30 of the PRC, is hereafter referred to as the "CIWMB."
>
> Upon designation as a regional agency, the CCCSWA may combine reporting of disposal quantities and diversion programs of the participating members to be used by the CIWMB for determining compliance with the waste diversion requirements of AB 939."

3. The following subsection is inserted at the end of **Article 2, Section B** of the Agreement:

> "14. On behalf of those members who choose to participate, to jointly report disposal and diversion to the CIWMB as a single regional agency. The participating members of this regional agency are the cities and towns of Danville, Lafayette, Moraga, Orinda and Walnut Creek, who hereafter may be referred to collectively as the "Participating Members" or individually as a "Participating Member." Future CCCSWA members may elect to become Participating Members subject to the approval of the CCCSWA Board and CIWMB. Although the County is a Member Agency of the CCCSWA, the County is not a Participating Member of this regional agency."

4. **Article 4, Section B** of the Agreement is deleted in its entirety and replaced with the following language:

> "B. Amendments: Except as otherwise provided below, this Agreement may be amended by a two-thirds (2/3) vote of all members of the Board, and any such amendments will be effectively upon the date of such action. The following provisions may be amended only by a two-thirds (2/3) vote of all members of the Board and approval by the Contra Costa County Board of Supervisors and shall become effective upon approval of the Board and the County: The last sentence of Article 1, Section E; the entirety of Article 1, Section F; the entirety of Article 2, Section B.14; and the entirety of Article 4, Sections B and C."

5. **Article 4, Section C** of the Agreement is deleted in its entirety and replaced with the following:

> "C. Undertaking of Specific Projects:
>
> 1. Although it is the intent of this Agreement, and therefore the purpose of the CCCSWA, to cooperate jointly amongst the Member Agencies so as to provide the most efficient operation of solid waste facilities and most efficient means of handling and /or disposal of solid waste, green waste and recyclables on a regional basis, nothing contained in this Agreement is intended to prevent the CCCSWA from undertaking projects and agreements to provide services pursuant to separate contacts between the CCCSWA and individual Member Agencies and non-member public agencies, which projects and agreements are not intended to benefit all of the Member Agencies. The CCCSWA shall hold title to each project and to the

rights and benefits of each agreement in trust for the use of the members who participate. The members who participate in a project or agreement shall indemnify and hold harmless the members who do not participate from liability of any kind resulting from, or in any way related to, the financing, construction, acquisition, operation or maintenance of such project, or resulting from or arising out of performance of such agreement.

2. The CCCSWA shall have the power to proceed with the final acquisition and construction of a project which is not joined in by all CCCSWA members, only when a separate project contract has been entered into which provides arrangements for obtaining funds sufficient to pay for all costs of such project.

3. Information Regarding Regional Agency Operation. Upon its designation as a regional agency, the CCCSWA will report disposal and diversion quantities to the CIWMB for the region as a whole for the Participating Members.

a. Expenses. The Participating Members will pay all costs associated with CCCSWA's activities as a regional agency, which will consist only of (1) the reporting of disposal and diversion on behalf of the Participating Members and (2) preparation of amendment(s) to existing Source Reduction and Recycling Elements (SRREs), Household Hazardous Waste Elements (HHWEs) and any other planning elements on behalf of the Participating Members ("Regional Agency Activities"). The costs associated with Regional Agency Activities include but are not limited to staff costs, consulting fees, attorneys fees, fines, penalties and forfeitures and any other expenditures arising from or related to Regional Agency Activities, including costs arising from or related to alleged non-compliance by the CCCSWA (in its capacity as a regional agency) or any of its Participating Members with the requirements of AB 939 (hereafter "Regional Agency Costs"). Regional Agency Costs do not include the cost of reporting the status of diversion programs implemented in the County area for use by the County in the County's Annual Report to the state. Except as otherwise provided in Article 4, Section C.3.d. below, all Regional Agency Costs

will be in proportion to each Participating Members' allocated share of the compensation paid to the CCCSWA-franchised solid waste collection companies for services provided in the incorporated areas pursuant to the CCCSWA franchises. Regional Agency Costs do not include the cost of planning, implementation, operation, and management of programs or any other services provided by the CCCSWA on behalf of all CCCSWA members that do not arise from and/or are not related to Regional Agency Activities.

Notwithstanding any other provisions in the Agreement to the contrary, neither the County nor County ratepayers will be required to pay, either directly or indirectly, any Regional Agency Costs, including the cost of preparation or submittal of the Annual Report to the state. Regional Agency Costs shall not be paid from the CCCSWA Diversion Incentive Fund or from any funds provided to the CCCSWA, either directly or indirectly, by the County or County ratepayers.

b. Source Reduction, Recycling, and Composting Programs to be Implemented by the CCCSWA: As a regional agency, the CCCSWA will be responsible for any amendments to Participating Members' existing Source Reduction and Recycling Elements (SRREs), Household Hazardous Waste Elements (HHWEs) and any other planning elements on behalf of the Participating Members. The CCCSWA also has the primary responsibility for implementation of the majority of diversion programs detailed in the Participating Members' SRREs and HHWEs, as prepared and submitted in July 1992, and as amended.

c. Duties and Responsibilities of Each Participating Member: Each Participating Member will, pursuant to existing resolutions to delegate franchising authority, continue to participate in CCCSWA's joint franchises and other activities consistent with its SRRE and HHWE. If a Participating Member wishes to pursue separate and independent franchising, or if a new member joins the CCCSWA and elects not to be a part of the joint

franchises, then that member will be required to enter into a separate written arrangement with CCCSWA to provide sufficient authority to CCCSWA to ensure compliance with its SRRE and HHWE.

d. Civil Penalties: Any and all civil or criminal penalties, fines, forfeitures or expenditures of any nature imposed on or incurred by the CCCSWA or any CCCSWA Member that arise from or are related to the alleged noncompliance by the CCCSWA (in its capacity as a regional agency) or any Participating Member (in its capacity as a Participating Member of the regional agency) will be apportioned as specified herein. If a Participating Member fails to meet the requirements imposed by AB 939 and such failure results in the imposition of civil or criminal penalties, fines, forfeitures or expenditures of any nature by the CIWMB, and the CIWMB determines the degree to which one or more specific members are at fault, then the members determined to be at fault shall pay their designated proportional share of the civil or criminal penalty, fine, forfeiture, or expenditure at issue. If the CIWMB determines that one or more specific Participating Members are at fault, but does not specify the members' proportional responsibility, each Participating Member determined to be at fault shall be apportioned a share of such civil or criminal penalty, fine, forfeiture, or expenditure, in proportion to each Participating Members' allocated share of the compensation paid to the CCCSWA-franchised solid waste collection companies for services provided in the incorporated areas pursuant to the CCCSWA franchises. If the CIWMB determines that the CCCSWA as a whole is at fault, or does not determine which of the Participating Members are at fault, or attributes any fault to the County as to Regional Agency Activities each Participating Member shall be apportioned a share of such civil or criminal penalty, fine, forfeiture, or expenditure of any kind in proportion to each Participating Members' allocated share of the compensation paid to the CCCSWA-franchised solid waste collection

companies for services provided in the incorporated areas pursuant to the CCCSWA franchises. In no event will the County or County ratepayers be apportioned any share of any civil or criminal penalties, fines, forfeitures or expenditures of any kind that may be imposed by the CIWMB against the CCCSWA in its capacity as a regional agency or any of its Participating Members.

e. Withdrawal: Any Participating Member may withdraw from participation in regional agency activities by filing a written notice with the CCCSWA. Written notice of withdrawal must be tendered by July 1 of any calendar year, and will become effective January 1 of the following calendar year. A Participating Member who has withdrawn shall have responsibility for implementing its SRRE and HHWE, and shall agree to cooperate fully with the CCCSWA in implementation of then existing programs. Withdrawal as a Participating Member does not cause withdrawal from the CCCSWA. Participating Members who have withdrawn will continue to be responsible for payment of their respective shares of (1) any Regional Agency Costs incurred prior to the effective date of withdrawal and (2) any Regional Agency Costs incurred after the effective date of withdrawal arising from or related to alleged non-compliance by the CCCSWA (in its capacity as a regional agency) or any of its Participating Members with the requirements of AB 939 prior to the effective date of withdrawal.

f. Contingency Plan: In the event that all Participating Members withdraw or the CCCSWA permanently discontinues Regional Agency Activities, the Participating Members shall continue to be bound by the remaining terms of this Agreement and responsible for reporting disposal quantities and diversion activities for their respective cities.

g. Name and Address of Regional Agency:

Central Contra Costa Solid Waste Authority
1111 Civic Dr, Suite 275
Walnut Creek, CA 94596"

6. This First Amendment to the Third Amended Joint Exercise of Powers Agreement may be amended only by a two-thirds (2/3) vote of all members of the Board and approval by the Contra Costa County Board of Supervisors.

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are not intended to benefit all of the Member Agencies. The CCCSWA shall hold title to each project and to the rights and benefits of each agreement in trust for the use of the members who participate. The members who participate in a project or agreement shall indemnify and hold harmless the members who do not participate from liability of any kind resulting from, or in any way related to, the financing, construction, acquisition, operation or maintenance of such project, or resulting from or arising out of performance of such agreement.

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programs implemented in the County area for use by the County in the County's Annual Report to the state. Except as otherwise provided in Article 4, Section C.3.d. below, all Regional Agency Costs will be ~~apportioned among Participating Members such that each Participating Member is allocated a share of the Regional Agency Costs based upon the proportion of tonnage of solid waste collected within each jurisdiction in relation to the total tonnage of solid waste collected within the area served under the CCCSWA collection franchises (not including the unincorporated area) in the most recent 12-month period for which data is available~~in proportion to each Participating Members' allocated share of the compensation paid to the CCCSWA-franchised solid waste collection companies for services provided in the incorporated areas pursuant to the CCCSWA franchises. Regional Agency Costs do not include the cost of planning, implementation, operation, and management of programs or any other services provided by the CCCSWA on behalf of all CCCSWA members that do not arise from and/or are not related to Regional Agency Activities.

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c. Duties and Responsibilities of Each Participating Member: Each Participating Member will, pursuant to existing resolutions to delegate franchising authority, continue to participate in CCCSWA's joint franchises and other activities consistent with its SRRE and HHWE. If a Participating Member wishes to pursue separate and independent franchising, or if a new member joins the CCCSWA and elects not to be a part of the joint franchises, then that member will be required to enter into a separate written arrangement with CCCSWA to provide sufficient authority to CCCSWA to ensure compliance with its SRRE and HHWE.

d. Civil Penalties: Any and all civil or criminal penalties, fines, forfeitures or expenditures of any nature imposed on or incurred by the CCCSWA or any CCCSWA Member that arise from or are related to the alleged noncompliance by the CCCSWA (in its capacity as a regional agency) or any Participating Member (in its capacity as a Participating Member of the regional agency) will be apportioned as specified herein. If a Participating Member fails to meet the requirements imposed by AB 939 and such failure results in the imposition of civil or criminal penalties, fines, forfeitures or expenditures of any nature by the CIWMB, and the CIWMB determines the degree to which one or more specific members are at fault, then the members determined to be at fault shall pay their designated proportional share of the civil or criminal penalty, fine, forfeiture, or expenditure at issue. If the CIWMB determines that one or more specific Participating Members are at fault, but does not specify the members' proportional responsibility, each Participating Member determined to be at fault shall be apportioned a

share of such civil or criminal penalty, fine, forfeiture, or expenditure, in proportion to each Participating Members' allocated share of the compensation paid to the CCCSWA-franchised solid waste collection companies for services provided in the incorporated areas pursuant to the CCCSWA franchises.~~in proportion to that Participating Member's percentage of the total tonnage of solid waste collected within the area served under the CCCSWA franchises (not including the unincorporated area) in the most recent 12-month period for which data is available.~~ If the CIWMB determines that the CCCSWA as a whole is at fault, or does not determine which of the Participating Members are at fault, or attributes any fault to the County as to Regional Agency Activities each Participating Member shall be apportioned a share of such civil or criminal penalty, fine, forfeiture, or expenditure of any kind in proportion to each Participating Members' allocated share of the compensation paid to the CCCSWA-franchised solid waste collection companies for services provided in the incorporated areas pursuant to the CCCSWA franchises.~~in proportion to that Participating Member's percentage of the total tonnage of solid waste collected within the area served under the CCCSWA franchises (not including the unincorporated area) in the most recent 12-month period for which data is available.~~ In no event will the County or County ratepayers be apportioned any share of any civil or criminal penalties, fines, forfeitures or expenditures of any kind that may be imposed by the CIWMB against the CCCSWA in its capacity as a regional agency or any of its Participating Members.

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e. Withdrawal: Any Participating Member may withdraw from participation in regional agency activities by filing a written notice with the CCCSWA. Written notice of withdrawal must be tendered by July 1 of any calendar year, and will become effective January 1 of the following calendar year. A Participating Member who has

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f. Contingency Plan: In the event that all Participating Members withdraw or the CCCSWA permanently discontinues Regional Agency Activities, the Participating Members shall continue to be bound by the remaining terms of this Agreement and responsible for reporting disposal quantities and diversion activities for their respective cities.

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